



CALIFORNIA FARM BUREAU FEDERATION

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Sent via E-Mail
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July 14, 2011

Delta Protection Commission
14215 River Road
P.O. Box 530b
Walnut Grove, CA 95690

Re: Comments on the First Administrative Draft Economic Sustainability Plan for the
Sacramento-San Joaquin Delta

Dear Chair Nottoli and Members of the Commission:

The California Farm Bureau Federation (“California Farm Bureau”) is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. The California Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing approximately 76,500 agricultural and associate members in 56 counties, including 5 affiliated Delta County Farm Bureaus (Sacramento, San Joaquin, Yolo, Solano, and Contra Costa), as well as many counties receiving water within the Delta watershed and in the export service areas of the Central Valley Project and State Water Project in the southern portion of the state.¹ The California Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

As captioned above, the subject of these comments is the Delta Protection Commission's Economic Sustainability Plan (“ESP”). These comments respond specifically to the Commission's First Administrative Draft Economic Sustainability Plan for the Sacramento-San Joaquin Delta, dated June 16, 2011. Our understanding is a public draft ESP will be released sometime in the coming weeks and that the final ESP is currently expected in early September 2011. In fact, this leaves little time. Nonetheless, these comments attempt offer various suggestions for completion of the ESP in the time remaining.

¹ While the particular views of these Delta County Farm Bureaus (or any other county Farm Bureau) may differ in some respects from the views expressed herein, these comments attempt to capture a statewide perspective on the DPC's ESP and on Delta issues in general.

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The Legislature's Charge to the Delta Protection Commission Regarding an Economic Sustainability Plan for the Delta

The Sacramento-San Joaquin River Delta Reform Act of 2009 ("Reform Act")² notes that the Delta Protection Commission ("Commission") "provides an existing forum for Delta residents to engage in decisions regarding actions to recognize and enhance the unique cultural, recreational, and agricultural resources of the Delta."³ "As such," the section continues, "[the Commission] is the appropriate agency to identify and provide recommendations to the Delta Stewardship Council on methods of preserving the Delta as an evolving place as the Delta Stewardship Council develops and implements the Delta Plan."⁴

The Reform Act directs the Commission to develop "a proposal to protect, enhance, and sustain the unique cultural, historical, recreational, agricultural, and economic values of the Delta as an evolving place, in a manner consistent with the coequal goals."⁵ Thereafter, the Reform Act provides that the Delta Stewardship Council ("Council") will "consider the proposal and may include any portion of the proposal in the Delta Plan if the council, in its discretion, determines that the portion of the proposal is feasible and consistent with the objectives of the Delta Plan and the purposes of this division."⁶

The Commission's Economic Sustainability Plan ("ESP") is to include "information and recommendations that inform the Council's policies regarding the socioeconomic sustainability of the Delta region."⁷ Specifically, the ESP is to include as required content without limitation,

- (1) Public safety recommendations, such as flood protection recommendations.
- (2) The economic goals, policies, and objectives in local general plans and other local economic efforts, including recommendations on continued socioeconomic sustainability of agriculture and its infrastructure and legacy communities in the Delta.
- (3) Comments and recommendations to the Department of Water Resources concerning its periodic update of the flood management plan for the Delta.
- (4) Identification of ways to encourage recreational investment along the key river corridors, as appropriate.⁸

The Reform Act created a "Delta Investment Fund." Monies from this fund are to be available to the Commission, "upon appropriation by the Legislature," "for implementation of

² Senate Bill No. 7 (2009-2010 7th Ex. Sess.)

³ Pub. Res. Code, § 29759, subd. (a).

⁴ *Ibid.*

⁵ Water Code, § 85301, subd. (a).

⁶ *Id.* at § 85301, subd. (d). See, also, *id.* at 29761.5, subd. (b), providing that the Council "shall" review the economic sustainability plan for consistency the Delta Plan within 180 days.

⁷ Pub. Res. Code, § 29759, subd. (a).

⁸ *Id.* at § 29759, subd. (b).

[the ESP], for the purposes of enhancing Delta communities.”⁹ In addition, out of a total \$11.14 billion for various purposes including drought relief, statewide water system operational improvements, conservation and watershed protection, groundwater protection and water quality, and water recycling, the Safe, Clean, and Reliable Drinking Water Supply Act of 2010 (“Water Supply Act”)¹⁰ (if approved by voters) would provide \$750,000,000 for “projects, including grants to Delta counties and cities within the Delta, that provide public benefits and support Delta sustainability options, including projects [that]”

- (A) Ensure that urban and agricultural water supplies derived from the Delta, including water supplies used within the Delta, are not disrupted because of catastrophic failures of Delta levees resulting from earthquakes, floods, land sinking, rising ocean levels, or other forces.
- (B) Assist in preserving economically viable and sustainable agriculture and other economic activities in the Delta.
- (C) Improve the quality of drinking water derived from the Delta.
- (D) Improve levee and flood control facilities and other vital infrastructure necessary to protect Delta communities affected by the implementation of this chapter.
- (E) Provide physical improvements or other actions to create waterflow and water quality conditions within the Delta to provide adequate habitat for native fish and wildlife.
- (F) Facilitate other projects that provide public benefits and support Delta sustainability options approved by the Legislature, including costs associated with planning, monitoring, and design of alternatives, and project modifications and adaptations necessary to achieve the goals of this chapter.
- (G) Mitigate other impacts of water conveyance and ecosystem restoration.
- (H) Provide or improve water quality facilities and other infrastructure.¹¹

Of this \$750,000,000, the Water Supply Act provides that “up to two hundred fifty million dollars (\$250,000,000) may be expended in the Delta to provide assistance to local governments and the local agricultural economy due to loss of productive agricultural lands for habitat and ecosystem restoration within the Delta.”¹²

Legislative Findings Regarding State Policy, Goals and Objectives for the Delta Including the “Coequal Goals”

Among the legislative findings in the Reform Act is a finding that “[t]he Sacramento-San Joaquin Delta watershed and California’s water infrastructure are in crisis and existing Delta

⁹ Pub. Res. Code, § 29778.5.

¹⁰ Senate Bill No. 2 (2009-2010 7th Ex. Sess.).

¹¹ Sen. Bill No. 2 (2009-2010 7th Ex. Sess., § 79731, subd. (a)(1)(A)-(H).

¹² *Id.* at § 79731, subd. (a)(3).

policies are not sustainable.”¹³ Similarly, the Water Supply Act concludes that “[c]urrent management and use of the Delta is not sustainable, and results in a high level of conflict among various interests.”¹⁴ “Future Delta sustainability,” that section continues, “is threatened by changing hydrology due to climate change, water diversions, flood risk, seismic events, nonnative species, toxics, and other environmental problems.”¹⁵

The “coequal goals” referred to in section 85301 and elsewhere in the Reform Act refer to “the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem.”¹⁶ In addition, the Reform Act specifies that “[t]he coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.”¹⁷

Per the Reform Act, “objectives” “inherent” in the “coequal goals” include:

- (a) Manag[ing] the Delta’s water and environmental resources and the water resources of the state over the long term.
- (b) Protect[ing] and enhance[ing] the unique cultural, recreational, and agricultural values of the California Delta as an evolving place.
- (c) Restor[ing] the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem.
- (d) Promot[ing] statewide water conservation, water use efficiency, and sustainable water use.
- (e) Improv[ing] water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta.
- (f) Improv[ing] the water conveyance system and expand statewide water storage.
- (g) Reduc[ing] risks to people, property, and state interests in the Delta by effective emergency preparedness, appropriate land uses, and investments in flood protection.

¹³ *Id.* at § 85001.

¹⁴ Sen. Bill No. 7 (2009-2010 7th Ex. Sess, § 79730, subd. (a)).

¹⁵ *Ibid.*

¹⁶ Water Code, § 85054.

¹⁷ *Ibid.* See, also, Pub. Resources Code, § 29702: “[T]he basic goals of the state for the Delta are the following: (a) Achieve the two coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. (b) Protect, maintain, and, where possible, enhance and restore the overall quality of the Delta environment, including, but not limited to, agriculture, wildlife habitat, and recreational activities. (c) Ensure orderly, balanced conservation and development of Delta land resources. (d) Improve flood protection by structural and nonstructural means to ensure an increased level of public health and safety.”

- (h) Establish[ing] a new governance structure with the authority, responsibility, accountability, scientific support, and adequate and secure funding to achieve these objectives.¹⁸

In addition, “fundamental goals for managing land use in the Delta” identified in the Act include:

- (1) Protect[ing], maintain[ing], enhance[ing], and, where feasible, restor[ing] the overall quality of the Delta environment and its natural and artificial resources.
- (2) Ensur[ing] the utilization and conservation of Delta resources, taking into account the social and economic needs of the people of the state.
- (3) Maximiz[ing] public access to Delta resources and maximiz[ing] public recreational opportunities in the Delta consistent with sound resources conservation principles and constitutionally protected rights of private property owners.
- (4) Encourag[ing] state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the Delta.
- (5) Develop[ing] new or improved aquatic and terrestrial habitat and protect existing habitats to advance the goal of restoring and enhancing the Delta ecosystem.
- (6) Improv[ing] water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta.¹⁹

Relationship of the Commission’s ESP to the Council’s Delta Plan

In a chapter devoted to “Protect[ing] and Enhanc[ing] the Unique Cultural, Recreational, Natural Resources, and Agricultural Values of the California Delta as an Evolving Place,” the Council’s Fourth Staff Draft Delta Plan includes some discussion of the Commission’s ESP’s potential relationship to the Delta Plan. For example, on page 157 of the Fourth Staff Draft (lines 13 through 19), there is the following discussion:

The DPC is developing an Economic Sustainability Plan, which will inform the Council’s policies for economic sustainability in the Delta. The plan will define a baseline of economic values for Delta activities, propose alternative planning scenarios to sustain legacy towns, and prioritize improvements in flood control and public safety critical to counteract the potential impacts of climate change and seismic risks on the economic sustainability of the Delta. The Economic Sustainability Plan will also identify and recommend investments in capital and ongoing operation and maintenance necessary to achieve sustainability goals.

¹⁸ Water Code, § 85020.

¹⁹ *Id.* at §85022, subd. (d).

At lines 39 through 41, the Fourth Staff Draft includes a statement that “[t]he Delta Plan *will rely heavily on local and regional direction* to achieve [a series of “recommendations” in Fourth Staff Draft regarding the ESP], and relies on the regulatory policies of other sections of the Delta Plan to ensure progress toward the coequal goals.”

Specifically, this refers to the Fourth Staff Draft’s recommendations that the ESP “should include planning for, “but not be limited to”:

- Public safety, including flood protection
- Continued economic sustainability of Delta agriculture
- Long-term strategies for legacy communities vital to the tourist economy
- Priorities for investment in flood management
- Recreation
- Infrastructure to support the proposed economic strategies

Aside from these specific recommendations in the Fourth Staff Draft and the specific guidance found in the Delta Reform Act then, there is currently a general “placeholder” in the Delta Plan that the Legislature and Council intend to be filled with “regional and local direction.” This then again highlights the importance and value to local interests of an ESP that can be fairly seamlessly “incorporated” in the Council’s statewide Delta Plan.

General Comments on the Economic Sustainability Plan

The Commission’s ESP is potentially a very important opportunity for in-Delta interests, including Delta farmers, to influence and directly shape state policy on the Delta. As required by statute, the Commission’s final ESP will be submitted to the Legislature, to the Governor’s Office, and to the Delta Stewardship Council.²⁰ The Council will consider the Commission’s final ESP and, “in its discretion,” may then incorporate all or “any portion” of the ESP in its Delta Plan.²¹ Portions of the ESP that are incorporated in the Delta Plan would then become *a part* of the Delta Plan—whereas any “covered actions” or incorporated plans would be required to meet certain “consistency” requirements in accordance with the goals, priorities, and objectives laid out in the Plan (including any portions of the ESP that are incorporated in the Plan).²²

²⁰ Pub. Res. Code, § 29761.5, subd. (b). Water Code, § 85301, subd. (a).

²¹ Water Code, § 85301, subd. (d).

²² See Water Code, § 85001, subd. (c) (“[I]t is the intent of the Legislature to provide [...] for the sustainable management of the Sacramento-San Joaquin Delta ecosystem, to provide for a more reliable water supply for the state, to protect and enhance the quality of water supply from the Delta, and to establish a governance structure that will direct efforts across state agencies to develop a legally enforceable Delta Plan.”); *id.* at 85225, subd. (a) (“A state or local public agency that proposes to undertake a covered action, prior to initiating the implementation of that covered action, shall prepare a written certification of consistency with detailed findings as to whether the covered action is consistent with the Delta Plan and shall submit that certification to the council.”); *id.* at 85022, subd. (a)-(b) (“It is the intent of the Legislature that state and local land use actions identified as ‘covered actions’ pursuant to Section 85057.5 be consistent with the Delta Plan. [...] The actions of the council shall be guided by the findings, policies, and goals expressed in this section when reviewing decisions of the commission pursuant to Division 19.5 (commencing with Section 29700) of the Public Resources Code.”).

In order for the Council to incorporate all or any portion of the ESP in its Plan, the ESP as a whole (or those portions of the ESP incorporated in the Plan as to the “economic sustainability” of the Delta) must be generally compatible with other state policies, goals and policies embodied in the Plan. Furthermore, to the extent the Reform Act repeatedly characterizes the Delta as an “evolving place,”²³ as well as a place that is subject to various pressures, physical influences, and management or infrastructure decisions and actions which may act upon and change the Delta over time, it follows that the ESP must be generally compatible or adaptable to a range of potential Delta “futures.”

The Commission’s ESP must include concrete recommendations in terms of state policy and investment in the long-term economic sustainability of the Delta—and yet, at the same time, remain adaptable to a range of potential future contingencies, possible changes, statewide policies, objectives, etc. If the Commission’s plan for economic sustainability in the Delta is insufficiently flexible or incompatible with other important state policies and objectives, this may make it more difficult for the Council to adopt the ESP without change as part of the Delta Plan. If the Council is unable to adopt all or any portion of the Commission’s ESP, this then creates the risk that important in-Delta perspectives provided in the Commission’s ESP may be excluded or omitted from the Delta Plan.

It also follows that, if the Council is unable to incorporate all or any portion of the ESP in the Delta Plan, the Council will then be obligated to replace any omitted content or perspectives from the ESP with non-Delta content and perspectives. Since these perspectives and this content will be provided by persons who have no direct vested interest in the Delta’s economy, and who do not speak for or, perhaps, even fully understand in-Delta interests, any substitution of non-ESP content would amount to a missed opportunity to provide true in-Delta perspective for inclusion in the Council’s Delta Plan.

For these reasons, it is very important that the Commission craft the information in its ESP in such a way that it faithfully reflects Delta values, interests, and the priorities but, at the same time, avoids highlighting conflicts that might generate unnecessary controversy or opposition, or otherwise raise potential hurdles to ultimate inclusion of the ESP, or portions thereof, in the larger Delta Plan.

Specific Comments, Suggestions and Recommendations on the ESP

- Extensive bibliographic references, sources, and citations throughout the ESP will be very important to substantiate the ESP’s content and to backup its assertions and conclusions. For the most part, such references are not currently a part of the document.

²³ See, e.g., Pub. Res. Code, § 29702, subd. (a); *id.* at 29703.5, subd. (a); Water Code, § 85020, subd. (b); *id.* at § 85054; *id.* at § 85301.

- It is very important to clearly describe underlying assumptions and methodologies, and to identify areas of uncertainty requiring further clarification, research, or additional data.
- An open, transparent and public process for the ESP is important to ensure maximum credibility and defensibility. Desirable components of such an approach include:
 - Multiple opportunities for public input;
 - Extensive dialogue and public discussion of the ESP, not only before the Commission, but also *before the Council*.
- Overall, the tone of the ESP should be neutral and objective. This does not preclude the opportunity to present or imply a viewpoint but, for maximum effect, the ESP should avoid editorial and especially unsubstantiated, unexplained, or unattributed assertions of fact or opinion. To the extent possible, political considerations and viewpoints should be left out of the document. Such considerations can be more appropriately aired in other documents and venues, including comment letters, public meetings, newspapers and other media, advocacy efforts, political campaigns, or the legislative process. Moreover, while such consideration and viewpoints may be an important part of the Delta perspective, the reality is that this perspective may be lost completely if, as a result of unnecessary controversy arising from them, these portions of the ESP—or the ESP as a whole—are *not* incorporated as a part of the Council's final Delta Plan.
- Much of the technical and highly detailed information in the administrative draft ESP—for example, much of the levee- and flood control-related portion of the document—could be moved to one or more technical appendices or significantly pruned, and otherwise greatly condensed or summarized in the main body of the ESP itself. This would improve the readability of the document overall and would also be better suited to the general planning-level purposes of the ESP.
- Portions of the ESP devote significant effort to rebutting and debunking other documents, policies, and programs. While important and relevant perhaps from an in-Delta perspective, for maximum effect, such commentary should be generally secondary to the main content of the plan itself. Such content and such views needn't go unspoken. However, in keeping with the specific purposes of the ESP, they are better reserved for other venues and documents, including comment letters, public meetings, newspapers and other media, advocacy efforts, political campaigns, the legislative process, or litigation.

- Baseline factual data, statistics, and technical information serve an important function in the ESP. There is a considerable amount of such information in the report already—but more would be even better. Such information should support the perspectives and conclusions of the report. As with all information in the ESP, sources, methodologies, and underlying assumptions should be thoroughly described and disclosed throughout.
- For a document that purports to lay a path for regional economic sustainability, the current draft is quite short on actual recommendations. While the “Integration and Recommendation” portion of the document is currently incomplete, this portion of the document should ultimately become the core of the ESP (at least for policy purposes and for purposes of the Council’s Delta Plan). Recommendations should flow from the content of the ESP itself and should be generally compatible with any Delta Plan and any of a range of possible alternative futures (although, obviously, different “alternative futures” have potential to impact the Delta’s economic sustainability differently).
- Since the Delta faces numerous possible futures, the DPC’s ESP should be adaptable (within reason) to a range of different futures, as well as a range of different policy choices. Of course, ensuring the long-term economic sustainability of the Delta will preclude or limit some futures, to the extent those future may be fundamentally incompatible with the economic sustainability of the region. If it is a reasonable possibility, however, even these futures should be at least described and then qualified appropriately as to their incompatibility with the ESP’s vision of economic sustainability.
- If avoiding an incompatible future is something within reasonable human control, then the ESP should include make specific recommendations to avoid such an outcome. If it is something beyond reasonable human control, then the ESP should generally characterize the risk of such an outcome and describe the potential impact on the economic sustainability of the Delta.
- The current draft of the ESP does not (in any detail) describe existing habitat or the existing condition of the Delta ecosystem. Since habitat and the timing, volume, and movement of water through the Delta have potential to impact economic sustainability significantly, it seems that more detailed discussion of existing and potential future habitat and flow conditions would be relevant to the ESP. To the extent such things impact the economic sustainability of the Delta, the ESP could then consider impacts and make recommendations regarding specific policies or approaches to ensure economic sustainability.

- On page 94, regarding “wildlife friendly agriculture” and easements, one potential economically sustainable approach and an alternative to permanent easements would be to use an annual or possible multi-year sign-up system, similar to the fallow program sign-ups in the Imperial Valley, or the Department of Water Resources’ Drought Water Bank. The advantage here would be the added flexibility such an approach could afford, in contrast to permanent easements that restrict economic activity in perpetuity (including crop choice in response to changing market conditions). Under such an approach, farmers would sign up to grow a particular crop, for a certain term, under contract. Such a habitat program would pay farmers to make up any market loss associated with a particular crop and would, thus, remove any economic disincentive to grow that crop. In this way, Delta-wide acreage targets for desired crops could be met without permanently restricting or “freezing in time” any particular use of the land or particular cropping pattern. Such an approach might meet with less opposition and resistance and might, therefore, meet with greater success than a program of acquisition that aims to permanently restrict management practices and crop types in perpetuity.
- The current ESP does not recommend specific mitigation measures to avoid potential adverse impacts on economic sustainability. In some cases, economic impacts in the Delta might be linked to potential large-scale changes in the physical environment (e.g., salinity, levees and flooding, and conversion of agricultural land to habitat). Where such changes are clearly and fundamentally linked to the economic sustainability of the Delta region, it may be appropriate for the ESP to make specific mitigation measures to reduce and avoid potential adverse impacts from such large-scale environmental changes.
- The ESP may also identify specific economic and environmental impacts and possible mitigation measures which should be considered in related environmental impacts studies (for example, in the Bay-Delta Conservation Plan’s or the Council’s Delta Plan EIR, as well as any site-specific CEQA documents tiering off those programmatic documents in the future).
- Three key components of the continued productivity of the Delta’s agriculturally dominated economy—and, thus, of the region’s long-term “economic sustainability”—are (1) adequately timed water of sufficient quantity and quality to support irrigation of Delta crops; (2) intact, adequately maintained levees; and (3) a sufficient base of available agricultural land. (In shorthand form, that is: salinity, levees, and land.) As the basic building blocks of the Delta economy, these three components provide a fundamental starting point for any economic sustainability for the Delta. Since the Reform Act requires the Council’s Delta Plan to achieve the “coequal goals” while at the same time preserving values in an “evolving” Delta, this would imply that the Council’s Delta Plan must itself look to

secure these three key elements. Given their importance to the Delta economy, however, it would be entirely appropriate for the ESP to make specific recommendations to preserve these key elements of the Delta economy as well:

- Water quality-related recommendations in the Commission's ESP might appropriately include infrastructure-, water operations-, regulatory-, governance- and policy-related recommendations, or recommendations concerning studies or planning activities to develop such mechanisms.
 - Levee-related recommendations in the ESP may include actual identification of priority levees, specific investment strategies, governance, flood control policies, recommendations for future studies, regulatory streamlining, and potential opportunities to improve interagency coordination and achieve greater integration of on-going programs, projects, studies, plans, etc.
 - Finally, farmland conversion-related recommendations could include recommendations on alternatives or mitigation strategies to avoid or lessen impacts to existing agricultural lands, recommendations regarding where and where not to restore habitat, strategies such as the one mentioned herein concerning easements and wildlife-friendly agriculture, and recommendations relating to ESA liabilities and assurances.
- Other components of "economic sustainability" can build upon a base that assumes the presence of the three fundamental elements described above. These secondary elements of a sustainability plan would include such things as investment strategies, economic development activities and programs, special designations, public education, branding and marketing, etc.

Conclusion

The California Farm Bureau appreciates the opportunity to comment on the Commission's Administrative Draft ESP. There is an impressive body of information already present in the draft ESP. As noted, some of this content suffers from the lack of citations and references in the current document. Presumably, this problem can be fairly easily remedied by simply providing the appropriate citations where possible. More significantly, there are "tone" problems in the current document, in addition to potential pitfalls associated with content that may hinder the important purposes of the ESP by stimulating controversy, if these portions of the document are not revised or modified appropriately.

This letter provides a number of specific recommendations, which may improve the document and maximize its potential. Ultimately, we believe the Commission's ESP is a critical

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part of any feasible Delta solution. This is why it is so important for the Commission's ESP to advance the very best recommendations on Delta economic sustainability possible—and to do so consistently with the statewide goals and objectives for management of the Delta as a key component of the water supply system for the state and an important ecosystem.

Questions regarding these comments may be directed to staff at 916-561-5673.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Justin E. Fredrickson", with a long horizontal line extending to the right.

Justin E. Fredrickson
Environmental Policy Analyst

JEF

cc: Phil Isenberg, Delta Stewardship Council
Jerry Meral, Bay-Delta Conservation Plan
Karen Ross, Secretary of Food & Agriculture